

The Honorable James Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

DWIGHT HOLLAND,

Plaintiff,

v.

KING COUNTY ADULT
DETENTION, KING COUNTY et al.,
KING COUNTY DISTRICT COURT
EAST DIVISION-Redmond Courthouse
et al., WASHINGTON STATE
DEPARTMENT OF LICENSING, et al.,
WASHINGTON STATE PATROL et al,
OFFICER WSP ANTHONY BROCK in
his individual and official capacity as
Washington State Patrol officer,
LAKEYSHA NICOLE WASHINGTON
in her individual and official capacity as
Prosecuting attorney, KING COUNTY
PROSECUTING ATTORNEY'S
OFFICE et al., GARY WESTSIDE
TOWING LLC,

Defendants.

NO. 12-cv-0791 JLR

PRETRIAL ORDER

JURISDICTION

The events occurred in in King County. Jurisdiction is vested in this court by virtue of 28 U.S.C. §1343 and 42 U.S.C. §1983 – federal question jurisdiction. State law claims have been dismissed.

1 CLAIMS AND DEFENSES

2 The remaining parties in this case are the plaintiff and Washington State Patrol Trooper
3 Anthony Brock (defendant or “Trooper Brock”). The plaintiff will pursue at trial the following
4 federal claims:

5 1. Plaintiff’s right under the Fourth Amendment to be free from an unreasonable seizure
6 (wrongful arrest) were violated under 42 U.S.C. § 1983 by defendant Trooper Brock.

7 2. Plaintiff’s right under the Fourth Amendment to be free from excessive force were
8 violated under 42 U.S.C. § 1983 from handcuffing by defendant Trooper Brock.

9
10 The defendant will pursue the following affirmative defenses and/or claims:

11 1. Defendant does not bear the burden of proof on any claim at issue in this action.
12 Plaintiff lacks evidence to support his claims, cannot meet his burden of proof, and accordingly
13 defendant denies all of the plaintiff’s claims.

14 2. Plaintiff cannot establish a constitutional violation. Even if he could, Trooper Brock is
15 entitled to qualified immunity.

16 3. Any emotional damages from which the plaintiff claims to suffer existed prior to the
17 alleged incidents and/or were caused by acts independent of the alleged incidents.

18 4. The injuries and damages complained of herein, if any, were pre-existing, caused by
19 plaintiff’s own conduct, and/or the conduct of others and are barred and/or subject to the law of
20 comparative fault.

21 5. Plaintiff’s injuries and/or damages, if any, were proximately caused by the wanton and
22 willful misconduct of plaintiff in intentionally acting in reckless disregard of the consequences.

23 6. Plaintiff failed to mitigate his damages, if any, and protect himself from avoidable
24 consequences.

25 ADMITTED FACTS

26 The following facts are admitted by the parties:

1. On September 16, 2011, shortly after 1:32 a.m., Trooper Brock conducted a traffic stop of plaintiff's vehicle for allegedly speeding southbound on SR-509 in Seattle.

2. Plaintiff was arrested by Trooper Brock for suspicion of Driving Under the Influence (DUI).

3. Trooper Brock did not know plaintiff's race or ethnicity and did not know plaintiff was African-American until after he was at plaintiff's driver-side window.

4. When Trooper Brock contacted plaintiff on the driver's side of his truck, plaintiff initially rolled his driver's side window down approximately one half inch.

5. After Trooper Brock contacted plaintiff on the driver's side of his truck, plaintiff spoke to him with his head turned away from him.

6. Plaintiff refused to take the voluntary field sobriety test.

7. Plaintiff was placed in handcuffs. Within minutes after plaintiff complained his handcuffs were too tight, Trooper Brock adjusted his handcuffs.

8. Trooper Brock asked plaintiff if he would submit to a breath test for alcohol.

9. Plaintiff did not submit to any breath test for alcohol.

10. Plaintiff was booked into the King County Jail.

11. Plaintiff never complained to anyone at the King County Jail of any wrist pain or discomfort from being handcuffed.

12. Plaintiff does not have any medical evidence that he suffered emotional distress as a result of any actions of Trooper Brock.

ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. Did Trooper Brock have probable cause to arrest plaintiff under the Fourth Amendment?

2. Was Trooper Brock's use of "force" in handcuffing plaintiff reasonable under the circumstances?

3. Is Trooper Brock entitled to qualified immunity?

EXPERT WITNESSES

Not applicable.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:

1. Yolanda King – Will testify
810 L st se
Auburn, WA 98002
206-458-5674

Information regarding the pain Holland suffered from the Hand cuff injury sustained by Trooper Brock's hand cuffs.

2. Stacey A. Wilson – Possible witness only
2021 Grant Ave. Unit C-201
Renton, Washington [98055]
253.486.3004

Information regarding (1) procedures for inmate communications at King County Adult Detention Center, including legal mail, confidential calls (2) Admitting and addressing new inmates medical needs (3) Addressing current inmates medical needs

3. Dr. Mayer - Possible witness only
Group Health 1420 5th Ave. Ste 375
Seattle, WA 98101
Physician Seen my wrist

Information regarding Holland's injury he sustain from Trooper Brock's handcuff

(b) On behalf of defendant:

1. Dwight Holland
325 Washington Ave. #332
Kent, WA 98032

Will testify. Mr. Holland is the plaintiff in this case and will testify to the facts and circumstances of this incident.

2. Trooper Brock
c/o Tobin E. Dale, AAG
Office of the Attorney General

1 800 5th Avenue, Suite 2000
2 Seattle, WA 98104

3 Will testify. Trooper Brock is a named defendant and will testify to the facts and
4 circumstances of this incident.

5 3. Capt. Mark Brogan
6 Washington State Patrol
7 210 11th Avenue SW
8 Olympia, WA 98504

9 Possible witness only. Capt. Brogan may testify to the training provided Trooper Brock,
10 procedures for DUI arrests, his performance, and other matters related to the allegations contained
11 in plaintiff's complaint.

12 4. Lt. Dan Atchinson
13 Washington State Patrol
14 Fire Training Academy
15 North Bend, WA

16 Possible witness only. Lt. Atchinson may testify to the training provided Trooper Brock,
17 procedures for DUI arrests, his performance, and other matters related to the allegations contained
18 in plaintiff's complaint.

19 5. Carla Weaver-Groseclose
20 1125 Washington Street SE
21 HLB, Floor 1
22 Olympia, WA 98501

23 Possible witness only. She may testify to the facts and circumstances of the revocation of
24 plaintiff's driver's license and why his driving privileges have not been restored.

25 6. Correctional Officer Rita Moses
26 c/o Endel Kolde
King County Prosecutor's Office
516 Third Ave., Suite W554
Seattle, WA 98104-2390

Will testify. King County Correctional Officer Rita Moses will testify regarding the
screening interview of plaintiff at the jail, the intake procedures at the jail, as well as the booking,
assessment, and evaluation of plaintiff.

7. Susan Densmore, RN
Colleen Larsen, RN
c/o Endel Kolde
King County Prosecutor's Office
516 Third Ave., Suite W554
Seattle, WA 98104-2390

Will testify. Ms. Densmore and/or Ms. Larsen will testify to the facts and circumstances of the medical, assessments, examinations and/or evaluations provided to plaintiff following the incident.

8. Deputy Prosecuting Attorney Lakeysha Washington
Senior Deputy Prosecuting Attorney Erin Norgaard
c/o Endel Kolde
King County Prosecutor's Office
516 Third Ave., Suite W554
Seattle, WA 98104-2390

Possible witnesses only. Ms. Washington and/or Ms. Norgaard may testify regarding the underlying criminal matter against plaintiff and its final disposition.

9. Rebecca Duke, M.D.
Swedish Physicians – Central Seattle Clinic
1600 E Jefferson ST, #510
Seattle, WA 98122

Possible witness only. She may testify regarding her letter dated November 7, 2013 for Ms. Yolanda King and to rebut Ms. King's testimony.

EXHIBITS

Given the dismissal of King County defendants, plaintiff withdraws his exhibits 6, 7, 9, 16, and 21.

(a) Admissibility stipulated:

Plaintiff's Exhibits: N/A

Defendant's Exhibits

A-1 Holland Arrest/WSP Case Report Citation # 1Z0501814 (90040001-90040013)

A-2 Video of Traffic Stop of Plaintiff, 9/16/2011

A-3 Video of Plaintiff in Trooper Brock's Patrol Car, 9/16/2011

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits

1 Washington State Patrol Affidavit, 1Z0501814, Trooper Brock

2 Uniform Washington State Tow/Impound And Inventory Record
 3 Washington State DUI Arrest Report Implied Consent Warning For Breath
 4 Washington State DUI Arrest Report DUI Interview
 5 Washington State DUI Arrest Report Sobriety Tests
 8 Booking photo and fingerprints
 10 Money/Property Release Form
 13 King County District Court, Criminal Complaint, *State v. Holland*
 14 King County District Court, *State v. Holland*, Various Notices/Pleadings
 15 King County District Court, *State v. Holland*, Motion, Certification and Order of Dismissal
 19 WAC 308-100-210

Defendant's Exhibits

A-4 Certified copy of Plaintiff's Driving Record
 A-5 Certified copy of Plaintiff's Order of Revocation for one year dated 09/30/11
 A-6 King County Jail Intake/Screening Records
 A-7 Group Health Medical Record, 11/17/2008
 A-8 Group Health Medical Record, 02/10/2009
 A-9 Group Health Medical Record, 04/10/2009
 A-10 Group Health Medical Record, 03/31/2011
 A-11 Plaintiff's Complaint for Damages, *Holland v. Hawkeye, et al.*, 04-cv-01821-RSL
 A-12 Plaintiff's First Amended Complaint, *Holland v. ER Solutions, Inc.*, 11-cv-01792-RSL, ECF No. 14
 A-13 Plaintiff's Complaint, *Holland v. Draper*, 12-cv-01409-JCC
 A-14 Order Granting Defendant's Motion for Summary Judgment, ECF No. 30, *Holland v. Draper*, 12-cv-01409-JCC

- 1 A-15 Defendant Trooper Brock's First Requests for Admission to Plaintiff and Plaintiff's
2 Response Thereto
- 3 A-16 Defendant Trooper Brock's First Interrogatories to Plaintiff and Plaintiff's Answers
4 Thereto
- 5 A-17 Defendant Trooper Brock's First Request for Production to Plaintiff and Plaintiff's
6 Responses Thereto
- 7 A-18 Letter dated 11/07/2013 from Swedish Physicians Re: Yolanda King
- 8 A-19 Hand sketch by Yolanda King of plaintiff's alleged wrist injuries

9 **(c) Authenticity and admissibility disputed:**

10 Plaintiff's Exhibits

- 11 11 King County Department of Adult Detention FBI background check
- 12 12 ALL CITY Bail Bond Posted for release
- 13 17 Internet Article, Alcohol and Nutrition – How does alcohol affects your blood sugar?
14 *MedicineNet.Com* - by Betty Kovacs, MS, RD
- 15 18 Blog, DUI limit really more of a guideline for state troopers in Washington State,
16 Seattle DUI Attorney, Lebya Defense PLLC
- 17 20 Excerpt from article, KIRO Radio Reporter

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19 Defendant's Exhibits: N/A

20
21 **ACTION BY THE COURT**

- 22 (a) This case is scheduled for trial before a jury on January 21, 2014.
- 23 (b) Trial briefs shall be submitted to the court on or before January 13, 2014.
- 24 (c) Jury instructions requested by either party shall be submitted to the court on or before
25 January 13, 2014. Suggested questions of either party to be asked of the jury by the
26 court on voir dire shall be submitted to the court on or before January 13, 2014.

1 This order has been approved by the parties as evidence by the signatures of their counsel.
2 This order shall control the subsequent course of the action unless modified by a subsequent
3 order. This order shall not be amended except by order of the court pursuant to agreement of
4 the parties or to prevent manifest injustice.

5 DATED this _____ day of January, 2014.

6
7
8 United States District Judge James Robart

9 FORM APPROVED

10 s/ Dwight Holland per 12/24/13 E-mail Authorization

11 Dwight Holland DATED this 24th day of December, 2013.
12 Pro Se Plaintiff

13 s/ Tobin E. Dale

DATED this 24th day of December, 2013.

14 TOBIN E. DALE, WSBA No. 29595
15 Assistant Attorney General
Attorneys for Defendant Trooper Brock

CERTIFICATION OF SERVICE

I hereby certify that on this 24th day of December, 2013, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Dwight Holland: dmanh3@comcast.net

/s/ Tobin E. Dale
TOBIN E. DALE, WSBA No. 29595
Assistant Attorney General
800 Fifth Ave., Ste. 2000; Seattle, WA 98104-3188
Tel: (206) 464-7352; Fax: (206) 587-4229
E-mail: TobinD@atg.wa.gov